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January 27, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 25, 2008

Case Number: TSO-0667

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter "the Individual") for access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, the Individual's access authorization should not be restored at this time.

I. Background

The Individual was born in a foreign country (the foreign country), but has lived in the United States for many years. He has worked at a DOE site for approximately 25 years.

In 1999, the Individual became a naturalized United States citizen. DOE Ex. 7 at 6. During a 2001 Personnel Security Interview (PSI), the Individual told the Local Security Office (LSO) that he viewed himself as a United States citizen and did not intend to exercise foreign citizenship. DOE Ex. 4 at 10. The Individual was granted a clearance. DOE Ex. 7 at 2.

In late 2006, the Individual obtained a passport from the foreign country (the foreign passport). DOE Ex. 7 at 5. In 2008, the LSO conducted another PSI. Ex. 3. The Individual stated that his mother owned property in the foreign country that was titled in his name, *id.* at 20, that the foreign country allowed each person a one-time property sale at a "really low property tax," *id.* at 21, and that he needed "the foreign passport saying I was living there" to sell the property at that rate, *id.* at 23. See also *id.* at 24-28. In an effort to resolve the security concern, the Individual

stated that he would renounce citizenship in the foreign country and relinquish his passport. *Id.* at 57-63.

After the PSI, the LSO issued a Notification Letter, DOE Ex. 1, citing 10 C.F.R. §§ 710.8(1) (Criterion L). Criterion L concerns whether an individual is honest, reliable and trustworthy, or subject to pressure or coercion. The Notification Letter cites, *inter alia*, the Individual's 2001 statement that he did not intend to exercise dual citizenship, and his subsequent acquisition and use of the foreign passport.

The Individual requested a hearing before an Office of Hearings and Appeals (OHA) Hearing Officer. DOE Ex. 2. The OHA Director appointed me to serve as the Hearing Officer.

II. The Hearing

At the hearing, DOE Counsel did not present any witnesses. The Individual testified and presented five witnesses: his wife and four individuals.

The Individual testified that his sole allegiance is to the United States, and that he did not understand that his acquisition and use of the foreign passport was an exercise of dual citizenship. *Tr.* at 47, 61. He described the circumstances as follows. He needed the foreign passport to "register" so that he could sell property that belonged to his mother but was titled in his name. *Id.* at 46, 61-67. Because the property belonged to his mother, he did not expect to benefit from the sale; nonetheless, his mother used the sale proceeds to return to the Individual and his siblings their previous gift to her of their inheritance from their father. *Id.* at 65-67. Immediately after the PSI, he renounced foreign citizenship and relinquished his foreign passport. *Id.* at 46.

The Individual's wife testified that she has been married to the Individual for many years. *Tr.* at 9. She testified that (i) the Individual's sole allegiance is to the United States, *id.* at 15-16; (ii) he obtained the foreign passport solely to get "proof of residence" for the property sale, *id.* at 11-13; and (iii) he "always" tells "the truth," *id.* at 16.

The other four witnesses who testified are employed at the DOE site, *see id.* 26, 32, 37, 41, and two of them know the Individual from outside of work, *id.* at 26, 41. The four individuals testified that they had no reason to question the Individual's allegiance and that he was honest, reliable, and trustworthy. *See, e.g.,* 26-28, 34-35, 37-39, 42-43.

The Individual submitted a number of supporting exhibits. The include: (i) documentation that he had renounced foreign citizenship and relinquished his foreign passport, Ind. Ex. 1, and (ii) a notarized letter from his brother, corroborating the Individual's limited involvement in the sale of the property, Ind. Ex. 8. The exhibits also include notarized letters from two individuals employed at the DOE site. One individual, a former supervisor, stated that the Individual is "completely loyal" to the United States and "completely reliable, trustworthy, and honest." Ind. Ex. 9. The other individual, a colleague and friend, stated that the Individual is "honest, reliable, and trustworthy," and that the Individual would not jeopardize the national security. Ind. Ex. 10.

III. Governing Standards

Under Part 710, certain types of information raise concerns about whether an individual is eligible for access authorization. Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern exists, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, how frequently it occurred, how recently it occurred, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *Id.* § 710.27(a).

IV. Analysis

The LSO correctly invoked Criterion L. The Individual's acquisition and use of the foreign passport raise a security concern. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (the Adjudicative Guidelines) ¶¶ 10(a)(1) (possession of foreign passport), 10(a)(5) (use of foreign citizenship to protect financial or business interests in another country); see also *Personnel Security Hearing*, TSO-0611 (2008) (foreign passport holder denied a clearance). Moreover, the

Individual's acquisition and use of the foreign passport - after telling the LSO he had no intention to exercise foreign citizenship - raises a concern about his trustworthiness.

The Individual has resolved the concern related to foreign citizenship. Mitigating factors related to foreign citizenship include: (i) dual citizenship arose from birth in a foreign country, (ii) the individual has expressed a willingness to renounce the citizenship, and (iii) the foreign passport has been invalidated in some manner. See Adjudicative Guidelines ¶¶ 11(a), 11(b), 11(e). As noted above, the Individual has renounced foreign citizenship and relinquished the foreign passport. Ind. Ex. 1. Moreover, the Individual no longer has property in the foreign country. Tr. at 20, 46; Ind. Ex. 8.

There remains, however, a concern about the Individual's trustworthiness. It is undisputed that, in 2001, the Individual told the LSO that he had no intention of exercising foreign citizenship. Ex. 4 at 10. The record supports the Individual's assertion that he accurately stated his intent: in 2004, he allowed his foreign passport to expire. Ind. Ex. 5. Nonetheless, the Individual subsequently acquired and used the foreign passport. Although the Individual maintains that he did not know that he was exercising foreign citizenship, the Individual's asserted lack of knowledge is insufficient to resolve the concern. A reasonable person would have realized that these actions would, at a minimum, raise an issue of foreign citizenship that warranted consultation with the LSO. Accordingly, I find that the Individual has not resolved the concern about his trustworthiness.

V. Conclusion

The Individual has not resolved the Criterion L concern set forth in the Notification Letter. For that reason, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet N. Freimuth
Hearing Officer
Office of Hearings and Appeals

Date: January 27, 2009

